

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Apprenticeships, Study and Training

Chapter 1: Apprenticeships

Completing an apprenticeship

Section 1: Meaning of “completing an English apprenticeship”

40. **Section 1** sets out the circumstances in which a person completes an English apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard English completion conditions or the alternative English completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised English apprenticeship framework. The conditions also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.
41. *Subsection (4)* modifies the effect of subsection (3) where a person has been party to a succession of apprenticeship agreements relating to the same framework while working towards the competencies qualification specified, or has taken two or more courses of training leading to the competencies qualification. The person can still be entitled to an apprenticeship certificate in these circumstances.
42. *Subsections (5) and (6)* enable regulations to be made which cater for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. The power to make regulations might be exercised, for instance, give a self-employed person or someone working as an unwaged volunteer an entitlement to an apprenticeship certificate, provided they had met all the other requirements specified for the award of a certificate.

Section 2: Meaning of “completing a Welsh apprenticeship”

43. **Section 2** sets out the circumstances in which a person completes a Welsh apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard Welsh completion conditions or the alternative Welsh completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised Welsh apprenticeship framework. The conditions

also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.

44. The effect of *subsection (4)* is as described in paragraph 41.
45. *Subsections (5) and (6)* enable the Welsh Ministers to make regulations to provide for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. This power might be exercised also in the instances described in paragraph 42.

Apprenticeship certificates: England

46. *Sections 3 to 6* make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person.

Section 3: Duty to issue: England

47. *Subsection (1)* places a duty on the “English certifying authority” to issue an apprenticeship certificate to a person who appears to the certifying authority to have completed an English apprenticeship in relation to the apprenticeship framework and meets the other requirements within the section. (The “English certifying authority” is defined in section 6 as being the Chief Executive of Skills Funding.)

Section 4: Power to issue: England

48. This section gives discretion to the English certifying authority to issue an apprenticeship certificate to a person who applies to it who is not within section 1. This may apply to a person who is not within section 1 but who has successfully completed all the requirements of an apprenticeship framework for England.

Section 5: Issue by the English certifying authority: supplementary

49. *Subsection (1)* makes provision for English certifying authority to charge a fee for issuing an apprenticeship certificate where authorised to do so by the Secretary of State in accordance with the regulations. *Subsection (2)* allows the Secretary of State to make regulations to enable the English certifying authority to supply duplicate certificates, and *subsection (3)* specifies that these regulations may also include provision for the English certifying authority to charge a fee for that service.

Section 6: The English certifying authority

50. This section provides that the “English certifying authority” is the Chief Executive of Skills Funding. The Government’s intention is that the Chief Executive of Skills Funding will delegate this responsibility to the Chief Executive of the National Apprenticeship Service (see Notes to section 82), who may sub-delegate it to sub-contractors.

Section 7: Duty to issue: Wales, Section 8: Power to issue: Wales, Section 9: Issue by the Welsh certifying authority: supplementary, Section 10: The Welsh certifying authority

51. *Sections 7 to 10* make provision about the issue of apprenticeship certificates in Wales. In particular, Section 10 provides that the certifying authority for apprenticeships in Wales will be persons designated for that purpose by the Welsh Ministers or the Welsh Ministers themselves.

Section 11: Contents of apprenticeship certificate

52. This section applies to England and Wales. It sets out the required contents of an apprenticeship certificate whether issued under sections 3, 4, 7 or 8.

Apprenticeship frameworks: England and Wales

53. **Sections 12 to 22** relate to apprenticeship frameworks. An apprenticeship framework is a high level curriculum for an apprenticeship in a specified career. The frameworks typically include an integrated programme which contains a competence element; a knowledge element; transferable or key skills; and employment rights and responsibilities. The frameworks require a person to obtain a qualification such as an NVQ at level 2, 3 or 4 in a particular subject to meet the competence and knowledge elements, as well as key skills in literacy and numeracy. These sections set out the procedures for the issue of apprenticeship frameworks, as developed by employers, Standard Setting Bodies and Sector Skills Councils according to the specification of apprenticeship standards in England and Wales. The separate provision for a specification of apprenticeship standards for England in sections 23-27 and for Wales in sections 28-31 enables variations between the specification of apprenticeship standards for England and the specification of apprenticeship standards for Wales and the related recognised frameworks.

Apprenticeship Frameworks: England

Section 13: English issuing authority

54. This section enables the Secretary of State to designate a person to issue recognised English apprenticeship frameworks relating to a particular sector. However, this would still allow Sector Skills Councils and other sector bodies to issue frameworks over more than one sector. A person designated under this section is referred to as “the English issuing authority”. *Subsection (2)* provides that there is to be only one person authorised to issue frameworks for a particular apprenticeship sector. The Government’s intention is that, in England, frameworks will be issued by Sector Skills Councils working in partnership with Standard Setting Bodies. *Subsection (3)* requires a person authorised to issue apprenticeship frameworks to comply with directions and guidance given by the Secretary of State in carrying out this function.

Section 14: Issue: England

55. This section allows the English issuing authority to issue apprenticeship frameworks only if the authority is satisfied that the framework meets the requirements of the specification of apprenticeship standards for England. Recognised English frameworks will remain current until withdrawn. *Subsection (2)* allows a recognised English framework to be withdrawn at any time by the English issuing authority or, if the issuing authority has ceased to exist, by the Secretary of State.

Section 15: Recognised English frameworks: notification and publication

56. This section requires the English issuing authority to publish recognised English frameworks which it issues and to notify the Chief Executive of Skills Funding of the issue of a framework and send him a copy of the framework. *Subsection (3)* requires a person withdrawing a framework to publish notice of this and to advise the Chief Executive of Skills Funding of the withdrawal. *Subsection (4)* permits the English certifying authority to publish a recognised English framework or a notice of withdrawal however it chooses; but the effect of section 13(3) is that in doing so the English certifying authority would still be required to have regard to guidance from the Secretary of State.

Section 16: Submission of draft framework for issue: England

57. This section sets out the procedure when individuals and organisations submit a draft apprenticeship framework to the English issuing authority, and request that it be published as a framework. If the authority decides not to issue the framework in the form of a draft, it must give the individual or organisation who has submitted the draft reasons for its decision. The authority can require the individual or organisation to provide information which it needs to assess the framework against the specification of apprenticeship standards for England. In practice, this section will be relevant when learning providers and employers submit new draft apprenticeship frameworks, for occupations or sectors which do not have a framework in place.

Section 17: Transitional provision: England

58. This section enables the Secretary of State to make an order providing that a framework already existing as at the date when section 14 comes into force is to be treated as if it were a framework issued under section 14 (a “deemed framework”). This would enable a person to enter into an apprenticeship agreement relating to a framework of this type. The effect of *subsection (4)*, though, is that an order under this section will not be able to permit a person to enter into a first apprenticeship agreement, in relation to an order of this type, after the date specified in that subsection, which is no later than the day after the day that is the school leaving date for 2013. This will provide a reasonable period for deemed frameworks to continue while arrangements are made to issue new frameworks under the specification of apprenticeship standards for England. If new frameworks are issued before that date that would replace deemed frameworks, the Government intends to withdraw the deemed framework. *Subsection (3)* sets out provision which an order under this section must include.

Apprenticeship frameworks: Wales

Section 18: Welsh issuing authority, Section 19: Issue: Wales, Section 20: Recognised Welsh frameworks: notification and publication, Section 21: Submission of draft apprenticeship framework for issue: Wales, Section 22: Transitional provision: Wales

59. These sections relate to apprenticeship frameworks in Wales. In particular, section 18 provides Welsh Ministers with the power to designate a person to issue apprenticeship frameworks in Wales, relating to a particular sector. The sections also make provision about the publication of apprenticeship frameworks in Wales. Broadly speaking, these provisions mirror those made by sections 13 to 17 in relation to England.

Specification of apprenticeship standards: England

60. *Sections 23 to 27* make provision about the preparation, modification and contents of the specification of apprenticeship standards for England. Apprenticeship frameworks must conform to the requirements of the specification of apprenticeship standards for England if they are to be issued by the English issuing authority as “recognised English frameworks”. The specification could contain, for example, requirements as to competence and knowledge based elements, transferable skills such as key skills in literacy and numeracy or functional skills in English and Maths, employment rights and responsibilities and clear progression routes. It must require each recognised English framework to identify a qualification that is the “competencies qualification” for the purposes of the framework.

Section 23: Duty to prepare and submit draft specification: England

61. This section empowers the Secretary of State to direct the Chief Executive of Skills Funding to produce a draft specification of apprenticeship standards for England and to consult on the draft with those designated under section 13; with representatives

of employers, FE institutions and training providers; with other persons specified in regulations; and with other persons the Chief Executive of Skills Funding thinks appropriate.

Section 24: Order bringing specification into effect

62. This section empowers the Secretary of State to give effect by order, which is subject to the negative resolution procedure, to the specification of apprenticeship standards for England, provided the contents comply with section 27. *Subsection (3)* requires that there may be only one specification of apprenticeship standards for England at any time.

Section 25: Modification: England

63. This section allows the Secretary of State to direct the Chief Executive of Skills Funding to modify the specification of apprenticeship standards for England provided the contents of the specification, as modified still complies with section 27.

Section 26: Replacement or modification: recognised English frameworks

64. If a new specification of apprenticeship standards for England is given effect to under section 24, or if an existing specification is modified under section 25, frameworks that have already been issued under section 14 may not comply with the requirements of the new or modified specification. *Subsection (1)* provides that a recognised English framework that fails to comply with a new or modified specification will not automatically cease to be recognised. But *subsection (2)* provides that an order under section 24, which would be subject to the negative resolution procedure, may provide for such a framework to cease to have effect as a recognised English framework.

Section 27: Contents of specification of apprenticeship standards for England

65. This section sets out what must be included in the specification of apprenticeship standards for England. *Subsection (1)* provides that the specification must specify requirements in relation to the content of recognised English frameworks at level 2 (known as Apprenticeships); and level 3 (known as Advanced Apprenticeships); and that it may specify requirements in relation to the content of recognised English frameworks at other levels. For instance, the specification might make provision about the content of recognised English frameworks for level 4 apprenticeships (known as Higher Apprenticeships). The effect of *subsection (2)* is that the specification must require English frameworks to specify requirements for the issue of apprenticeship certificates, including that a certificate may be issued only if the person has received both on-the-job and off-the-job training; that the qualification or qualifications taken together demonstrate the relevant occupational competencies and relevant technical knowledge; and levels of attainment required for the award of a certificate. It must also require each framework to identify the competencies qualification in respect of that framework.

Specification of apprenticeship standards: Wales

Section 28: Specification of apprenticeship standards for Wales, Section 29: Modification: Wales, Section 30: Replacement or modification: recognised Welsh frameworks, Section 31: Contents of specification of apprenticeship standards for Wales

66. These sections make provision in respect of the specification of apprenticeship standards for Wales, and are similar to sections 23 – 27 for England. The Welsh Ministers are given the power to prepare and consult on a draft specification of apprenticeship standards for Wales.

Apprenticeship agreements: England and Wales

Section 32: Meaning of “apprenticeship agreement”

67. This section applies to both England and Wales. The apprenticeship agreement will be a contract entered into between the employer and the apprentice. The Government expects that it should set out both the on-the-job training and the learning away from the workstation that will be delivered; make clear what job role an apprentice will be qualified to hold upon completion; and stipulate the supervision that an apprentice will receive throughout the period of the apprenticeship.
68. *Subsection (2)* sets out the conditions which must be satisfied by an apprenticeship agreement. The agreement must be in a form to be prescribed by the Secretary of State. *Subsection (3)* gives the Secretary of State the power to specify provisions which must and must not be included in an apprenticeship agreement. *Subsection (4)* enables an apprentice to enter into successive apprenticeship agreements relating to the same framework, even where that framework has ceased to be a recognised English or Welsh framework.

Section 33: Ineffective provisions

69. This section provides that if terms are included in an apprenticeship agreement which conflict with provisions that the Secretary of State has required to be included in the agreement, those terms have no effect.

Section 34: Variation

70. A variation to an agreement might be such that the agreement ceases to be an apprenticeship agreement. Section 34 provides that a variation of this type will not have effect unless, before it is made, the employer gives the apprentice written notice that it will have this effect.

Section 35: Status

71. This section provides that an apprenticeship agreement is not to be treated, for common law or statutory purposes, as being a contract of apprenticeship (as recognised at common law) but is instead to be treated as being a contract of service.

Section 36: Crown servants and Parliamentary staff

72. This section makes particular provision for Crown servants, members of the armed forces and Parliamentary staff. *Subsection (5)* empowers the Secretary of State to modify the application of the Act, or of provisions amended or inserted by the Act, in relation to Crown servants, members of the armed forces, and Parliamentary staff. This power is needed to make the Act work properly in relation to these classes of person, given their particular circumstances: for instance the fact that they may not have contracts of employment.

Section 37: Duty to participate in education or training: apprenticeship agreements.

73. This section amends section 2 of the Education and Skills Act 2008. The effect is that a person may satisfy the participation duty imposed by section 2 (duty to participate in education or training) by participating in training in accordance with an apprenticeship agreement.

General

Section 38: Apprenticeship sectors

74. This section requires the Secretary of State to specify apprenticeship sectors. The Government intends that these will be based upon the current sectoral coverage of Sector Skills Councils which are employer-led, independent organisations whose goals are to reduce skills gaps and shortages, improve productivity and increase opportunities to boost the skills and productivity of everyone in the sector's workforce.

Chapter 2: Study and Training

Section 40: Employer support for employee study and training

75. This section inserts a new Part 6A (sections 63D to 63K) and two new sections (47F and 104E) into the Employment Rights Act 1996.
76. New section 63D introduces a right for qualifying employees to make a statutory application to their employer in relation to study or training – essentially a request to their employer to allow them to undertake study or training, whether in the form of “on the job” training provided by the employer, or separately. The application is called a “section 63D application” in the legislation, but is likely to be known as a “time to train” application or request in practice. Later provisions provide that the request has to be considered by the employer and accepted unless one of the reasons for refusal allowed by the legislation applies.
77. Under section 63D the request must meet certain conditions in order to qualify for the scheme. For example, it must be for study or training that is intended to improve an employee's effectiveness at work and the performance of the employer's business.
78. The type of training which may be requested is further defined in new section 63E. Subsections (1) and (2) of that section allow a request to be for training of any sort. This means that an employee may request study or training that is undertaken outside the place of work with an external training provider or in-house training provided by the employer. The study or training might also include unsupervised learning, for example e-learning. Subsection (1) also allows for more than one course of training or study to be included in one request. For example a person may have identified that they have a need for basic skills training in numeracy and, following the completion of that training, would wish to undertake a full level 2 course related to their job. An employee would be able to include both courses of training in their request.
79. Subsection (3) of section 63E provides that it is not essential that the training lead to the award of a qualification of any sort. It will therefore be possible for an employee to request to undertake any study or training that they think will make them more effective in their current or future role in the employer's business and improve their employer's business performance, for example training to become more effective in the use of commercial software packages.
80. Section 63D defines which employees are eligible to make a request. The Secretary of State may specify in regulations the period employees must have been employed in order to qualify. The intention is that only employees who have been continuously employed by their current employer for 26 weeks or more will be eligible. However, the regulation making power will allow different employment durations to be set in the future after a period of operation of the policy if required.
81. Subsection (7) of section 63D lists employees who are not eligible to make a request for study or training under these provisions. The effect of this is to exclude employees whose learning needs are already catered for in other ways, for example employees who:
- are of compulsory school age (subject to restrictions, it is possible for people of compulsory school age to undertake employment) (paragraph (a)); or

- are young people who already have a statutory right to paid time off to undertake study or training (paragraph (d)); or
 - are 16 or 17 year olds who are already under a duty to participate in education or training as a result of Part 1 of the Education and Skills Act 2008 (paragraph (b)).
82. Agency workers are also excluded. In addition, the Secretary of State has the power to make regulations specifying other types of person to be excluded from the right. These regulations are subject to the affirmative resolution procedure. This will allow the Secretary of State flexibility to react to changes as needed and to exclude other employees from being qualifying employees if appropriate.
83. Subsection (8) of section 63D provides that an employee and employer can make other arrangements in relation to study or training if they so choose. Employees may choose to ask for training in ways other than those specified in the new Part 6A and may choose not to exercise their statutory right under this Part, for example if their employer is already undertaking annual performance reviews which result in their training needs being met.
84. To ensure the employee has considered and explained their study or training needs, how the proposed study or training would impact on the business and what the benefits to the employer are thought to be, section 63E(4) sets out precisely what an employee must include in their request. They must give details of the subject matter of the study or training, how long it would last, who would provide or supervise it and whether it would lead to a qualification, and state how they think it would make them more effective and improve the performance of the employer's business. *Subsection (5)* also includes a power for the Secretary of State to make regulations specifying the form of the application.
85. New section 63F specifies that employers must deal with requests under section 63D in line with regulations made by the Secretary of State. Subsection (1) of section 63F means that an employer has to deal with only one application from the employee in any 12 month period. However, in certain circumstances, an employer could be required to disregard an earlier application which has been submitted. These circumstances would be set out in regulations made under section 63F(3).
86. Subsection (4) of section 63F enables the Secretary of State to make regulations specifying how employers should deal with an application. The Government intends that regulations made in exercise of this power will set out the procedure for employers to follow. For example, they would include requirements concerning the holding of a meeting to discuss the application; for the employer to give the employee notice of the employer's decision on the application; about the procedure for exercising the right of appeal; for applications to be treated as withdrawn in certain circumstances; and in relation to companions which the employee may bring to meetings. The intention is to use the procedure set out in regulations made under the flexible working provisions (Part 8A of the Employment Rights Act 1996) as a model.
87. An employer may refuse a request for "time to train" only where they think that certain permissible business reasons apply. These are listed in subsection (7) of section 63F. An employer could refuse a request where they thought that the training would not improve the employee's effectiveness in the employer's business or improve the performance of the business; or that the study or training would impose a burden of additional costs on the business; or that it would mean that the business could not service its customers properly; that work could not be re-organised among existing staff; that there would be a negative impact on the quality of the output of the business; that there would be a negative impact on the performance of the business; that there would not be enough work for the employee during the periods during which the employee proposes to work; or that the business has planned structural changes. The Secretary of State has a power to make regulations to add reasons to this list.

88. An employer could also refuse part of a request for one of the reasons above. This could mean that an employee requesting to undertake two courses may have only one approved.
89. Where an employer agrees to a request for “time to train” an employee will be required under the new section 63H to inform their employer if they do not start the course or cease to attend the course. They will also need to let them know if they change the type of training they undertake from what they have agreed with the employer. Regulations made under this section may specify how employees should inform their employer of any changes in the training.
90. New section 63I makes provision for an employee to complain to an employment tribunal in two specific circumstances:
- where the employer has failed to comply with the duties concerning the consideration of a request (including procedural requirements); and
 - where the employer’s decision to refuse a request, or part of it, was based on incorrect facts
91. A complaint to an employment tribunal must (unless the tribunal exercises its discretion to grant an extension) be made within three months of either an employer notifying an employee following an appeal of the decision to refuse a request, or (in certain kinds of cases specified by the Secretary of State) from the point where the employer is alleged to have failed to comply with a duty.
92. Subsection (4) of section 63I excludes employees from complaining to employment tribunals under section 63I in relation to the right to be accompanied at meetings, if provision about complaints in such circumstances has instead been made in regulations under section 63F.
93. New section 63J provides that an employment tribunal, where they find the applicant’s complaint well-founded, must make a declaration to that effect and may require the employer to reconsider the request for “time to train”. They may also make an award of compensation. The limit on the number of weeks’ pay which a tribunal may award as compensation will be specified in regulations.
94. New section 63K provides that regulations made under these new provisions may make different provision for different cases.
95. New section 47F ensures that an employee has a right not to be subjected to any detriment by their employer as a result of making, or proposing to make, a request for “time to train”, or submitting a complaint to an employment tribunal under section 63I, or alleging circumstances that would justify such a claim.
96. New section 104E ensures that an employee would be able to claim that they were unfairly dismissed if the reason for their dismissal was that they made, or proposed to make, a request for “time to train” or submitted a claim to an employment tribunal under section 63I, or alleged circumstances that would justify such a claim.

Schedule 1: Employee study and training: minor and consequential amendments

97. **Schedule 1** makes minor and consequential amendments to the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Tribunals Act 1996 which are consequent upon the new statutory right for employees to request “time to train”. In particular, paragraph 12 will allow the Advisory, Conciliation and Arbitration Service to prepare a scheme to provide conciliation of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal under section 63I.